

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 06-CR-20448

v.

Hon. John Corbett O'Meara

MICHAEL TED WASIKOWSKI,

Defendant.

**ORDER DENYING APPLICATION
FOR CERTIFICATE OF APPEALABILITY**

Before the court is Defendant's application for a certificate of appealability, filed May 24, 2011. The court denied Defendant's Rule 60(b) motion on May 11, 2011. Although Defendant has not filed a notice of appeal, the court will consider his request for a certificate of appealability. A habeas petitioner is required to obtain a certificate of appealability in order to appeal the denial of a motion for relief from judgment brought pursuant to Fed. R. Civ. P. 60(b). United States v. Hardin, 481 F.3d 924, 926 (6th Cir. 2007). See also Fed. R. App. P. 22(b). The court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). In the context of the denial of a Rule 60(b) motion,

A [certificate of appealability] should issue only if the petitioner shows that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the 60(b) motion, states a valid claim of the denial of a constitutional right.

Kellogg v. Strack, 269 F.3d 100, 104 (2d Cir. 2001).

For the reasons set forth in its May 11, 2011 order, the court finds that is not “debatable” that Defendant is not entitled to relief pursuant to Rule 60(b) and has not shown that his constitutional rights have been violated. Accordingly, the court declines to issue a certificate of appealability, and further declines to permit leave to appeal *in forma pauperis*, because any such appeal would be frivolous. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24 (a); Foster v. Ludwick, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002); Allen v. Stovall, 156 F. Supp. 2d 791, 798 (E.D. Mich. 2001).

SO ORDERED.

s/John Corbett O’Meara
United States District Judge

Date: June 2, 2011

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, June 2, 2011, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager